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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS ND-46-FOR, Amendment No. XXXII]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the North Dakota regulatory program (the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposed revisions to its revegetation policy document, "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments." On its own initiative, it intended to revise its program to improve operational efficiency, clarify ambiguities, and revise its revegetation policy document to reflect the corresponding changes made to its rules, the North Dakota Administrative Code (NDAC).

EFFECTIVE DATE: July 7, 2003.

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SUPPLEMENTARY INFORMATION:

- I. Background on the North Dakota Program
- II. Submission of the Proposed Amendment
- III. Office of Surface Mining Reclamation and Enforcement's (OSM) Findings
- IV. Summary and Disposition of Comments
- V. OSM's Decision
- VI. Procedural Determinations

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders

by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act***; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.12, 934.13, 934.15, and 934.30.

II. Submission of the Proposed Amendment

By letter dated November 21, 2002, North Dakota sent us an amendment to its program (Amendment number XXXII, Administrative Record No. ND-GG-01) under SMCRA (30 U.S.C. 1201 *et seq.*). It sent the amendment on its own initiative. The amendment revises North Dakota's revegetation policy document. Many of the changes are made to incorporate rule changes that were approved by OSM and appeared in the March 2, 2001, **Federal Register** as part of State Program Amendment XXX (SPATS number ND-041-FOR) and other staff initiatives.

We announced receipt of the proposed amendment in the February 11, 2003, **Federal Register** (68 FR 6842). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. ND-GG-05). No one requested a public hearing or meeting so we did not conduct one. We did not receive any comments from the public.

OSM's Findings

Following are the findings we made concerning the amendment under

SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17.

A. Minor Revisions to North Dakota's Revegetation Document

Throughout the revegetation success guidance document, North Dakota has made editorial and clarification changes. Examples of editorial changes include changing "Soil Conservation Service or SCS" to "Natural Resources Conservation Service or NRCS", "which" to "that", "units" to "site", ensuring noun verb agreement, updating references, standardizing abbreviations and mathematical symbols, and revising example calculations to reflect the latest information. The editorial changes are no less effective than the Federal regulations.

Examples of changes made to clarify the existing document include adding text in: (1) Section II-B to identify using annual county yield reported by North Dakota Agricultural Statistic Service; (2) section II-C, to explain how to use the series modifiers in identifying appropriate productivity indices for each of the soil series listed in Table 1; and (3) section III-D to identify how to apply the various sampling methodologies for cover, production and density. None of these changes substantively revises the approved "Standards for Evaluation of Revegetation Success And Recommended Procedures for Pre-And Postmining Vegetation Assessments".

Because these changes are minor, we find that they will not make North Dakota's revegetation policies less effective than the corresponding Federal regulations.

B. Revisions to North Dakota's Revegetation Policy Document for Consistency With the Previously-Approved North Dakota Regulatory Program

North Dakota proposed revisions to its revegetation policy document to make it consistent with the previously-approved North Dakota regulatory program. Throughout the "Standards For Evaluation Of Revegetation Success And Recommended Procedures For Pre- And Postmining Vegetation Assessments", North Dakota has revised language to